

Honorable Lonny R. Suko

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

VALERIE K. CRISP, individually;
MICHELLE SWEET, individually;
ROBERT CREIGHTON and RHONDA
ELLIOTT, husband and wife; ROSITA
VOYKIN and PETER VOYKIN, wife
and husband; FREDERIKA
WETTERHUS and SAMUEL
WETTERHUS, wife and husband,

Plaintiffs,

vs.

ZIMMER AUSTIN, INC.,
FORMERLY KNOWN AS
CENTERPULSE ORTHOPEDICS,
INC.,

Defendant.

NO. CV05-0185-LRS

STIPULATED PROTECTIVE
ORDER

STIPULATED PROTECTIVE ORDER
CV05-0185-LRS

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Suite 1400
701 Pike Street
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(206) 292-9988

1 The parties have stipulated to the entry of this Protective Order in regard to
2 certain discovery material to be made available by Defendant Zimmer Austin,
3 Inc. ("Zimmer"). This discovery material includes trade secrets and confidential,
4 proprietary and non-public documents and information, the public disclosure of
5 which could be detrimental to the interests of Zimmer and/or related corporate
6 entities; documents which may contain information that is personal and
7 confidential to third parties, including individuals; and documents and
8 information subject to a claim of privilege or immunity from discovery (including
9 but not limited to attorney-client privilege, work product immunity, and
10 immunities created by federal or state statute or regulation). The parties agree
11 that the above-described documents and information should be given the
12 protection of an order of this Court to prevent irreparable harm through disclosure
13 to persons other than those persons involved in the prosecution or defense of this
14 litigation.
15

16 THEREFORE, FOR GOOD CAUSE SHOWN, IT IS HEREBY
17 ORDERED, ADJUDGED, and DECREED that the following Protective Order
18 shall govern discovery in the above-captioned matter, as follows:
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1 1. The following definitions shall apply to this Order: A "stamped
2 confidential document" means any document which bears the legend (or which
3 shall otherwise have had the legend recorded upon it in a way that brings its
4 attention to a reasonable examiner) "CONFIDENTIAL" or "CONFIDENTIAL-
5 SUBJECT TO PROTECTIVE ORDER" to signify that it contains information
6 subject to protection under Federal Rule of Civil Procedure 26(c)(7), or federal or
7 state statute or regulation. For purposes of this Order, the term "document"
8 means all written, recorded, or graphic material produced or created by a party or
9 any other person, whether produced pursuant to the Federal Rules of Civil
10 Procedure, subpoena, by agreement, or otherwise. Interrogatory answers,
11 responses to requests for admission, deposition transcripts and exhibits,
12 pleadings, motions, affidavits, and briefs that quote, summarize, or contain
13 materials entitled to protection may be accorded status as stamped confidential
14 documents, but, to the extent feasible, shall be prepared in such a manner that
15 stamped confidential documents are bound separately from those not entitled to
16 protection.

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18 2. Stamped confidential documents and their contents, as well as
19 copies, summaries, notes, memoranda and computer databases relating thereto,
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1 shall be and remain confidential, and shall not be disclosed in any fashion, nor be
2 used for any purpose other than the analysis and preparation for trial of this
3 action, except with the prior written consent of the party or other person
4 originally designating a document as a stamped confidential document, or as
5 hereinafter provided under this Order.
6

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8 3. Notwithstanding paragraph 2, stamped confidential documents may
9 be disclosed to counsel of record for the parties to this action who are actively
10 engaged in the conduct of this litigation; to the partners, associates, secretaries,
11 paralegal assistants, and employees of such an attorney to the extent reasonably
12 necessary to render professional services in the litigation; to persons with prior
13 knowledge of the documents or the confidential information contained therein,
14 and their agents; and to court officials involved in this litigation (including court
15 reporters, persons operating video recording equipment at depositions, and any
16 special master appointed by the Court). Subject to the provisions of subparagraph
17 3(c), such documents may also be disclosed:
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21 (a) to any person designated by the Court in the interest of justice, upon
22 such terms as the Court may deem proper; and
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1 (b) to persons noticed for depositions or designated as trial witnesses to
2 the extent reasonably necessary in preparing to testify; and to outside consultants
3 or experts retained for the purpose of assisting counsel in the litigation; provided,
4 however, that in all such cases, except as noted in paragraph 3(c) below, the
5 individual to whom disclosure is to be made has signed and filed with the Court a
6 Confidentiality Agreement, the form of which is attached hereto as Exhibit A,
7
8 containing —
9

10 (1) a recital that the signatory has read and understands this Order
11 and will abide by it;
12

13 (2) a recital that the signatory understands that unauthorized
14 disclosures of stamped confidential documents and their substance constitute
15 contempt of court; and
16

17 (3) a statement that the signatory consents to the exercise of
18 personal jurisdiction by this Court for purposes of enforcing this Order.
19

20 (c) Each outside consultant or expert retained for the purpose of
21 assisting counsel in this litigation to whom disclosure is made pursuant to
22 paragraph 3(b) above must sign a Confidentiality Agreement, the form of which
23 is attached hereto as exhibit A. That Agreement then must be returned to
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1 plaintiffs' counsel who shall retain any such Agreements during the pendency of
2 the litigation and must certify in writing to Zimmer's counsel that (1) a disclosure
3 was made to a consulting expert and (2) the consulting expert signed and returned
4 the Confidentiality Agreement.
5

6 (d) Before disclosing stamped confidential documents to any person
7 listed in subparagraph 3(a) or 3(b) who is a customer or competitor (including
8 employees or consultants of either) of the party that so designated the document,
9 the party wishing to make such disclosure shall give at least 15 days advance
10 notice in writing to the counsel who designated such information as confidential,
11 stating the names and addresses of the person(s) to whom the disclosure will be
12 made, identifying with particularity the documents to be disclosed, and stating the
13 purposes of such disclosure. If, within the 15-day period, a motion is filed
14 objecting to the proposed disclosure, the disclosure shall not be made unless and
15 until the Court has denied such motion. The Court will deny the motion unless
16 the objecting party shows good cause why the proposed disclosure should not be
17 permitted.
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1 (1) As used in this paragraph 3(d), the term "customer" means any
2 direct purchaser of products from any defendant, or any regular indirect purchaser
3 of defendants. The term "customer" is not meant to include physicians.
4

5 (2) As used in this paragraph 3(d), the term "competitor" means
6 any manufacturer or seller of medical devices.
7

8 4. Each person executing the Confidentiality Agreement submits to the
9 jurisdiction of this Court for the purposes of enforcement of this Order, either
10 prior to or following the completion of this action. Jurisdiction of this action is to
11 be retained by this Court after final determination for purposes of enabling any
12 party or persons affected by this Order to apply to the Court at any time for such
13 direction or further decree as may be appropriate for the construction or
14 enforcement of this Order or for such additional relief as may become
15 appropriate.
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18 5. Nothing in this Order shall preclude the disclosure by a party of
19 stamped confidential documents that it has produced.
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21 6. Nothing in this Order shall preclude the disclosure by any party of
22 publicly available documents or information.
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1 7. Before being copied for production, documents intended to be
2 brought within the scope of this Order shall be marked "CONFIDENTIAL" or
3 "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER."
4

5 8. Stamped confidential documents included as part of any pleading or
6 memorandum shall be filed in sealed envelopes or other containers on which shall
7 be endorsed the title of this action, an indication of the nature of the contents, the
8 word "CONFIDENTIAL" and the following statement:
9

10 This envelope containing documents that are filed in
11 this case by [name of party] is not to be opened nor the
12 contents thereof to be revealed except by court order;
13 provided, however, that counsel of record in this case
14 may open this envelope in the office of the Clerk of this
Court and there inspect the contents hereof, without
order of Court, and upon completion of each inspection
by counsel, the envelope containing such documents
shall be resealed.

15 Alternatively, such documents shall be filed under seal pursuant to the
16 requirements of the ECF electronic filing protocol of the Eastern District of
17 Washington.

18 9. Persons with knowledge may be deposed regarding stamped
19 confidential documents or the subject matter thereof. Only the parties and
20 persons described in paragraph 3, including the court reporter and the witness,
21 shall be present at such depositions. Transcripts of said depositions shall be
22 treated as stamped confidential documents in accordance with this Order.
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1 10. If, at the time of trial, counsel for any of the parties attempts to
2 introduce into evidence or use in cross-examination any stamped confidential
3 documents, whether as part of a document or deposition testimony, counsel for
4 either party may request the Court to preserve the confidentiality of that stamped
5 confidential document as the Court deems appropriate.
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8 11. In the event that another party disagrees with a party's designation of
9 any document or information as confidential, the objecting party shall advise
10 counsel for the designating party, in writing, of the objection and identify the
11 document or item with sufficient specificity to permit identification. Within 20
12 days of receiving the objection, the designating party shall advise the objecting
13 party's counsel whether the designating party will change the designation of the
14 document or item. If this cannot be resolved between the parties, then the dispute
15 will be presented to the Court by motion or otherwise. During the pendency of
16 any such motion, the designated document or item shall continue to be treated as
17 a stamped confidential document and subject to the provisions of this Order. On
18 the hearing of any such motion, the burden shall be on the designating party to
19 establish that the designated document or item should be deemed confidential. If
20 the Court determines that a document or documents should not have been
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1 designated confidential, the Court may, in the Court's discretion, order the
2 designating party to pay the objecting party's reasonable attorney's fees and
3 expenses related to challenging the designation.
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5 12. Nothing in this Order shall prevent or otherwise restrict counsel from
6 rendering advice to their clients in this litigation and, in the course thereof,
7 relying generally on examination of stamped confidential documents; provided,
8 however, that in rendering such advice and otherwise communicating with such
9 client, counsel shall not make specific disclosure of any item so designated except
10 pursuant to the procedures of paragraphs 3(b) and 3(c).
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13 13. If another court or an administrative agency subpoenas or orders
14 production of stamped confidential documents which a party has obtained under
15 the terms of this Order, such party shall promptly notify the party or other person
16 who designated the document as confidential of such subpoena, order or other
17 legal process.
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20 14. If a producing party inadvertently or unintentionally produces to a
21 receiving party any document without marking it as a stamped confidential
22 document pursuant to paragraph 1, the producing party shall, within 30 days of
23 the discovery of the inadvertent production, give notice to the receiving party in
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1 writing and thereafter the receiving party shall treat the document as a stamped
2 confidential document. Such inadvertent or unintentional disclosure shall not be
3 deemed a waiver in whole or in part of the producing party's claim of restriction
4 either as to specific documents and information disclosed or on the same or
5 related subject matter.
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8 15. If a producing party inadvertently or unintentionally produces to a
9 receiving party any documents or information subject to a claim of privilege or
10 immunity from discovery (including but not limited to attorney-client privilege,
11 work product immunity, and immunities created by federal or state statute or
12 regulation), the producing party shall, within 30 days of the discovery of the
13 inadvertent production, give notice to the receiving party in writing of the
14 producing party's claim of privilege or immunity from discovery. Thereafter, the
15 receiving party shall immediately return to the producing party the original and
16 all copies of the privileged materials, including copies of the privileged materials
17 disseminated to other persons by the receiving party. Such inadvertent or
18 unintentional disclosure shall not be deemed a waiver in whole or in part of the
19 producing party's claim of privilege or immunity from discovery either as to
20 specific documents and information disclosed or on the same or related subject
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1 matter. In the event that the receiving party disagrees with the producing party's
2 claim of privilege or immunity from discovery, then the receiving party shall
3 notify the producing party within five (5) business days of receipt of the
4 producing party's written notice of claim of privilege, and shall set forth the
5 precise grounds upon which the receiving party's position rests. If the parties
6 cannot resolve the matter, then the dispute will be presented to the Court by
7 motion or otherwise. During the pendency of any such motion, the receiving
8 party shall not copy, distribute, or otherwise use in any manner the disputed
9 documents or information, and shall instruct all persons to whom the receiving
10 party has disseminated a copy of the documents or information that the
11 documents or information are subject to this Order and may not be copied,
12 distributed, or otherwise used pending the motion and further notice from the
13 Court.
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18 16. The provisions of this Order shall not terminate at the conclusion of
19 this lawsuit. Within 90 days after final conclusion of all aspects of this litigation,
20 stamped confidential documents, and all copies of same (other than exhibits of
21 record) either shall be destroyed or returned to the producing party. In the event
22 that stamped confidential documents are produced in electronic form, or are put
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1 into electronic form by the receiving party with the consent of the providing
2 party, then the receiving party shall delete all electronic copies of stamped
3 confidential documents from all computer systems and disks. All counsel of
4 record shall make certification of compliance herewith and shall deliver the same
5 to counsel for the party who produced the documents not more than 120 days
6 after final termination of this litigation.
7
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9 17. The attorneys of record are responsible for employing reasonable
10 measures to control and record, consistent with this Order, duplication of, access
11 to, and distribution of stamped confidential documents, including abstracts and
12 summaries thereof. No duplications of stamped confidential documents shall be
13 made except by counsel to provide working copies and for filing in Court under
14 seal pursuant to paragraph 8.
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17 18. The Clerk may return to counsel or destroy any stamped confidential
18 documents in its possession.
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1 19. It is expressly understood by and between the parties that in granting
2 access to or producing stamped confidential documents in this litigation, Zimmer
3 shall be relying upon the terms and conditions of this Order.
4

5 DATED this 24th day of January, 2006.

6 LUKINS & ANNIS, P.S.

7
8 By: /s/ Robert J. Crotty
9 Robert J. Crotty, WSBA# 9113
10 Attorneys for Plaintiffs Valerie Crisp,
11 Michelle Sweet, Robert Creighton,
 Rhonda Elliot, Rosita Voykin and Peter
 Voykin

12 DATED this 24th day of January, 2006.

13 STEPHEN HASKELL LAW OFFICE

14
15 By: /s/ Stephen Craig Haskell
16 Stephen Craig Haskell, WSBA# 7832
17 Attorneys for Plaintiffs Frederika
 Wetterhus and Samuel Wetterhus

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24 STIPULATED PROTECTIVE ORDER

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1
2 DATED this 24th day of January, 2006.

3 BETTS, PATTERSON & MINES, P.S.
4

5 By: /s/ Christopher W. Tompkins
6 Christopher W. Tompkins, WSBA
7 #11686
8 Attorneys for Defendant Zimmer
9 Austin, Inc.
10
11

12 SO ORDERED this 27th day of January, 2006.
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14

15 s/Lonny R. Suko
16 Lonny R. Suko
17 Judge of the United States District Court
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**AGREEMENT TO MAINTAIN
CONFIDENTIALITY**

Honorable Lonny R. Suko

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

VALERIE K. CRISP, individually;
MICHELLE SWEET, individually;
ROBERT CREIGHTON and RHONDA
ELLIOTT, husband and wife; ROSITA
VOYKIN and PETER VOYKIN, wife
and husband; FREDERIKA
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WETTERHUS, wife and husband,

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Defendant.

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AGREEMENT TO MAINTAIN
CONFIDENTIALITY

AGREEMENT TO MAINTAIN
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1 1. I acknowledge that I am about to receive confidential information
2 supplied by Zimmer Austin, Inc. ("Zimmer").

3
4 2. I have read the Protective Order governing the restricted use of
5 confidential information in this litigation, a copy of which order has been
6 provided to me. I understand the Protective Order and agree to abide by it.
7

8 3. I will not utilize any stamped confidential document or other
9 information subject to the Protective Order for any purpose other than this
10 litigation. I further affirm that I will not reveal the confidential information to,
11 nor discuss it with, anyone, except in accordance with the terms of the Protective
12 Order.
13

14 4. I understand unauthorized disclosures of stamped confidential
15 documents or their substance constitute contempt of court.
16

17 5. At the termination of this litigation, I will return all documents
18 marked "Confidential," or "For Counsel Only," or "Attorneys' Eyes Only," as well
19 as any copies, summaries or abstracts of them, and documents related to them,
20 whether in hard copy, electronic, or digitized format, to the attorney providing
21 confidential materials to me.
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Dated: _____

Signature

Printed Name

Address

City, State, Zip

Telephone Number

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